Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the *Act*), seeking:

- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 AM on November 19, 2021, and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Application and the Notice of Hearing, and raised no concerns with regards to service date or method. As a result, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence and neither party raised concerns about the quality or accessibility of the evidence, service dates, or service methods, I accepted the documentary evidence before me from the parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were advised that pursuant to rule 6.11 of the Rules of Procedure, persons are prohibited from recording dispute resolution hearings, except as allowed by rule 6.12. As neither party had requested or been granted authorization to hire an accredited Court Reporter

as allowable under rule 6.12, I confirmed with the parties that they were not recording the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the *Act* the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application and confirmed at the hearing.

Preliminary Matters

Although the parties engaged in settlement discussions at several points during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on January 29, 2021, and is set to end on January 31, 2021. It states that rent in the amount of $2,100.00 is due on the first day of each month by etransfer, and includes the provision of the following services and facilities by the Landlord: window coverings, a washer and dryer in-unit, hot water, a stove, water/sewer/garbage collection services, a storage locker and parking for one vehicle.

The parties agreed that the central heating system for the rental unit, which is approximately 750-780 square feet with an open plan living/dining/kitchen area, a main bathroom, a master bedroom with ensuite, and a secondary bedroom, has malfunctioned on several occasions, including at the start of the tenancy, and that it was not functioning between March 18, 2021, and May 16, 2021. The parties agreed that it was finally repaired and operational May 17, 2021, and that the central heating system

is not only the primary heating system for the rental unit, but the only heating system. The parties agreed that the Tenant used space heaters to heat the rental unit during that time, one of which belonged to the Tenant and two of which were borrowed from the property management company. They also agreed that the Landlord offered an additional space heater, which was declined on the basis that a fourth space heater would blow the breaker.

There were no arguments from either party that the other had failed to act diligently in reporting the issue or resolving it, and the parties were agreed that resolution of the heating issue was delayed due to the extent of the issue and the need to involve the developer as it was a newly constructed building. The parties agreed that the Tenant was provided a rent reduction in the amount of $150.00 for the month of March 2021, as a result of the malfunctioning central heating system and that although the Landlord offered the Tenant a rent reduction for April 2021, in the amount of $30.00, it was declined by the Tenant on the basis that a $1.00 per day rent reduction was insufficient. The Tenant instead paid their full rent in April and May of 2021, and filed the Application seeking a $1,650.00 rent reduction, calculated at $30.00 per day that the central heating system was not functioning in the rental unit between March 18, 2021, and May 16, 2021, less the $150.00 rent reduction already received for March.

The Tenant stated that they are seeking a $30.00 per day rent reduction as they suffered significant hardship due to the lengthy period of time when the central heating system did not function, as the rental unit was constantly cold, they could not use the space heaters at night due to the fire safety risk, and moving the space heaters around the rental unit numerous times a day to heat the different spaces being used was exceptionally inconvenient. The Tenant stated that their discomfort and the level of inconvenience they suffered were both exacerbated by the fact that it was winter/early spring during the disruption to their heating system, and therefore quite cold, and the fact that the Tenant worked from home the majority of the time. The Tenant stated that in addition to the fact that the electric space heaters were more costly than the gas furnace for the central heating system, they were also much less efficient and not of a sufficient size to heat the space adequately, leaving the Tenant cold much of the time. Further to this, the Tenant stated that two of the sides of the rental unit are exposed, there a large number of floor-to-ceiling windows, and the rental unit is on the 35th floor, making it even more difficult for the rental unit to retain what little heat the space heaters produced.

The Tenant stated that the average ambient air temperature outside was a high of 10 degrees in March, 14 degrees in April and 16.8 degrees in May, a low of 4.5 degrees in

March, 6.7 degrees in April, and 8 degrees in May, with an average nightly low of 2-3 degrees. The Tenant stated that their average gas bill is $15.00-$20.00 per month but that during the central heating malfunction, their average kilowatt hours of electricity used per month doubled. Although the Tenant did not provide copies of their bills, during the hearing they recited their electricity billing information between the start of the tenancy and their last billing period which ended on October 22, 2021.

Although the Landlord agreed that some level of compensation was due to the Tenant for the inconvenience of having to use space heaters, they disagreed that the Tenant should be provided with compensation in the amount of $30.00 per day, as they believed this amount to be excessive as it represents 50% of the per diem amount of rent charged for the rental unit. The Landlord argued that this amount is unreasonable as the Tenant still had full use of the rental unit and was not entirely without heat. Further to this, the Landlord stated that the Tenant never provided them with any bills demonstrating an increased cost to them for running the space heaters, above what the cost would have been to run the central heating system. The Landlord also stated that when they visited the rental unit in December of 2020, after it was purchased, the temperature in the rental unit was never below 19 degrees, even with the heart off, and that the Tenant will have received the benefits of heat rising from lower unit and the sun, as the rental unit is south facing. As a result, the Landlord argued that a $1.00 per day rent reduction is more appropriate.

Although the Tenant acknowledged that they have not provided the Landlord with copies of their bills, they stated that the Landlord never requested them, and that in any event, their claim is really about the level of inconvenience suffered by them and their loss of quiet enjoyment as a result of the loss of the rental unit's heating system, not the added expense of running the space heaters. Further to this, the Tenant stated that at the time their central heating system was broken in their unit, there was no heat on their floor as the heating systems are inter-connected on each floor and that the heating system was also malfunctioning on the floor directly below. As a result, the Tenant argued that there were not the added benefits of heat from surrounding rental units alleged by the Landlord. The Tenant also called into question the reliability and the relevance of electricity usage information submitted by the Landlord for various other units in the building.

Both parties stated that they had reviewed previous decisions from the Branch which supported their positions but neither party provided copies of any previous decisions for my review or consideration.

The Tenant provided comprehensive records of communications with the Landlord and building managers regarding the issues with the central heating system, copies of emails between the Landlord and the developer regarding the central heat issues, photographs of the rental unit and space heaters, copies of communications with the Landlord regarding rent reductions, and etransfer receipts for the payment of rent. The Landlord provided a photograph of the exterior of the building in which the rental unit is located, copies of text and email communications between themselves and the Tenant, etransfer records, daily temperature information for April and May of 2021, and electrical billing history information for 5 units of the building allegedly obtained by an FOIPPA request by the Landlord to the electricity service provider.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies exists between the parties, the terms of which are set out in the tenancy agreement in the documentary evidence before me as confirmed by the parties at the hearing.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. Further to this, section 33 of the *Act* includes urgent repairs to the primary heating system necessary for the health and safety of anyone under the definition of an emergency repair. The parties agreed that the primary heating system of the rental unit stopped working on March 18, 2021, and was not repaired until May 17, 2021. They also agreed that the ambient air temperature was low much of this time, due to the time of year. Although the parties disagreed about whether the space heaters the Tenant was using were sufficient to adequately heat the space, I am satisfied on a balance of probabilities by the Tenant that they were not, given the size of the heaters, the Tenant’s affirmed and undisputed testimony regarding the constraints of the electrical panel of the rental unit on the use of additional heaters, the photographs and testimony regarding the size and layout of the

rental unit, the evidence before me regarding temperatures inside and outside of the rental unit during this time, and the fact that several sides of the rental unit contain large floor to ceiling windows. As a result, I am satisfied that the Landlord breached section 32(1) of the *Act.* Further to this, I find that the repairs required to the central heating system constituted emergency repairs under section 33 of the *Act*, which makes the two month duration of the central heating system outage in the rental unit particularly egregious, especially during winter and early spring.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*, and use of common areas for reasonable and lawful purposes, free from significant interference. Although the parties disagreed about the level of inconvenience and discomfort suffered by the Tenant during the lack of central heating in the rental unit, I give more weight to the Tenant's evidence and testimony in this regard, as they were physically residing in the rental unit at that time and are therefore in a far better position to speak to the temperatures in the rental unit and the level of discomfort and inconvenience suffered by them as a result, than the Landlord, as the Landlord did not reside in or frequent the rental unit.

As a result, I accept as fact that the Tenant suffered a very significant loss of quiet enjoyment of their rental unit as a result of the absence of their central heating system for a 60 day period spanning the months of March, April, and May of 2021. Given the very serious nature of the repairs needed, the importance of the central heating system to the Tennant during the winter and spring, and the significant level of discomfort and inconvenience I am satisfied that the Tenant suffered during this 60 day period, I am satisfied that the value of their tenancy was significantly reduced during this time. Although the landlord argued that a $1.00 per day rent reduction would be sufficient, I disagree. Such a low rent reduction simply fails to take into account, in any real or meaningful way, the significant loss in the value of the tenancy suffered by the Tenant over what is an unequivocally long period of time to be without the main heating system of the rental unit during the winter and early spring. Although the Landlord also argued that the Tenant had full use of the rental unit and therefore a significant rent reduction was not appropriate, again I disagree. Although the rental unit itself was not damaged, I disagree with the Landlord that the Tenant had full use and enjoyment of it during the 60 day period in which the central heating system was not functioning, as I accept as fact that the Tenant was required to constantly move their limited number of space heaters throughout the rental unit during the day, in order to pre-warm spaces, such as the

bathroom, bedroom, living room, and open concept living/dining/kitchen area, before use. I therefore do not find that the Tenant had full use and enjoyment of the rental unit during this time, in any real, reasonable, or meaningful way.

Residential Tenancy Policy Guideline (Policy Guideline) #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the Act, regulations or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As set out above, I am satisfied that the Landlord breached the *Act* and that the Tenant suffered significant loss of quiet enjoyment of the rental unit and a devaluation of their tenancy as a result. Given the serious impact I find that the loss of a primary heating system had on the Tenant during the winter and early spring, and the significant duration of this loss, I am also satisfied that the amount sought by the Tenant, $30.00 per day, (which equates to approximately 43% of the per diem rental rate, based on a 30 day month), less the $150.00 already received, is reasonable under the circumstances. Finally, as there is significant documentary evidence before me that the Tenant was diligent in reporting the issue and following up, used alternate heat sources to the best of their abilities and the maximum capabilities of the electrical system in the rental unit, and attempted on several occasions prior to filing the Application to negotiate a rent reduction with the Landlord, I am also satisfied that the Tenant acted reasonably to minimize their damage or loss.

Based on the above, I therefore grant that Tenant the $1,650.00 rent reduction sought; $1,800.00 calculated at $30.00/day for the period of March 18, 2021, – May 16, 2021, less the $150.00 rent reduction already received for March 2021. As the Tenant was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of **$1,750.00** and I order the Landlord to pay

this amount to the Tenant or to allow the Tenant to otherwise recover this amount through a rent reduction.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$1,750.00** and I order the Landlord to pay this amount to the Tenant. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing the Monetary Order, the Tenant is permitted to deduct the $1,750.00 owed from the next months rent due under the tenancy agreement, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: November 19, 2021

Residential Tenancy Branch